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WITHDRAWN

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European Police Systems

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WITHDRAWN

European Police Systems

BY

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With a New Introduction by
DONAL E. J. MACNAMARA

Montclair, New Jersey
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INTRODUCTION TO THE REPRINT EDITION

The map of Europe is much changed since Raymond B. Fosdick visited London, Paris, Berlin, Rome, Vienna, and other of its major cities in 1913-14. No longer reign the Hohenzollerns, Hapsburgs, and the house of Victor Emmanuel, then arrogant in their majesty and splendor and much concerned with the effectiveness of their police in suppressing popular dissent and in ferreting out conspirators. Nevertheless one has a strong feeling of *déjà vu* as one reads Fosdick's descriptions of the police apparatus in these cities, some now under different sovereignties and nearly all under quite different forms of government. Certainly the more things have changed in the police field, the more they have remained the same.

Fosdick is an admirer, although not a wholly uncritical one, of the continental police systems. He sees them as having higher standards of integrity, more flexible organizational and operational patterns, and (despite inadequacies in pay, prestige, and general education) far more effectiveness in meeting their police responsibilities than their American counterparts. To some extent Fosdick was an "innocent abroad," overimpressed by the charming manners, pre-war courtesy to the visiting student, and the European policing methods which though superficially "scientific" consisted largely of lip service to the teachings of Hans Gross and limited application of the techniques of Alphonse Bertillon, Salvatore Ottolenghi, Juan Vucetich, and L. W. Atcherley (of *modus operandi* fame). To one whose previous observations were limited to the New York police department, which at that time was neither progressive nor particularly courteous (*vide* contemporary newspaper and

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periodical accounts), the European police forces were understandably impressive.

Fosdick did recognize however that the homogeneity of the populations policed, the more stringent registration and identification controls, and the relatively low population mobility and transiency were factors favorable to crime repression. But he was unaware, at least so far as is evident from his comments, of the rather direct relationship between the diminished individual freedom which characterized most of the societies he studied and the effectiveness of their police apparatus (his brief discussion of the Royal Irish Constabulary and the Dublin Metropolitan Police makes no mention of their reinforcement by large numbers of regular British troops nor of Ireland's stringent penal code, perhaps more repressive than any other in history, which was designed to keep a rebellious populace in check). In a cross-cultural study (particularly one made before World War I) comparing the police of other countries with that of the United States, such variations in political freedom can be highly significant.

When I first taught a course in Comparative Police Administration at the University of Southern California some twenty years ago, *European Police Systems* was the only available English-language text. Since then James Cramer's very useful *The World's Police* (1964) has been published, whose three-page bibliography lists Fosdick's work as the only predecessor dealing with the police system of more than one country and one of only a few describing any national police system other than the British. The extensive bibliography in *European Police Systems* is itself of great interest and value, even at this late date, to the student of police and criminological development.

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In the Summer of 1968, I had occasion to visit Copenhagen, Stockholm, Amsterdam, Berlin, Leningrad and Moscow. Certainly the police systems in these continental metropolitan centers have undergone many changes in the years since 1914, but the ratios of police to population are today, as in Fosdick's time, still much higher than those usually prevailing in American municipalities of similar size. Furthermore, the uniforms, insignia, rank and section designations, and more importantly the traditions and operating techniques remain strikingly similar to the descriptions in Fosdick's monograph. The Volkspolizei of the German Democratic Republic (East Germany), for example, reflect more closely the patterns of their West German brother police agencies and officers than those of their ideological co-professionals of the Soviet law enforcement apparatus.

Cross-cultural studies of government institutions and agencies, their development, their problems, and above all the manner in which they interact with other elements within their socio-economic systems are of great importance today. Fosdick's *European Police Systems*, particularly, retains its relevance to our new and heterogeneous culture, which numbers among its population millions of immigrants and descendants of immigrants whose concepts of justice and attitudes toward the agencies of law enforcement have been molded or conditioned by direct or indirect exposure to European patterns.

—DONAL E. J. MACNAMARA

John Jay College of Criminal Justice
City University of New York
January, 1969

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- ORGANIZATION OF THE DETECTIVE BUREAU OF BERLIN
- ORGANIZATION OF THE DETECTIVE BUREAU OF PARIS

INTRODUCTORY NOTE.

The object of this book, the third of a series published by the Bureau of Social Hygiene, is to describe and to discuss critically the essential features of the police systems of the larger European municipalities. The material presented was drawn from extended personal inquiry and observation in the chief cities of England, Scotland, France, Germany, Austria-Hungary, Italy, Holland and Belgium.¹ To the investigation of the subject and the preparation of the book almost two years were devoted.

It affords me genuine pleasure to make the fullest acknowledgment of the aid given to me by governmental officials, police officers and others all over Europe. To mention by name those to whom my thanks are due is manifestly impossible. But I may at least be permitted to testify to the uniform and unwearied courtesy and helpfulness which I encountered everywhere. Reports and documents were freely placed at my disposal; unhampered facilities for observation were furnished;

¹The cities visited included London, Liverpool, Manchester, Birmingham, Glasgow, Edinburgh, Paris, Lyons, Berlin, Hamburg, Bremen, Dresden, Munich, Stuttgart, Cologne, Vienna, Budapest, Rome, Brussels, Amsterdam and Rotterdam.

Introductory Note

abundant opportunity for discussion was given, and finally the manuscript was read and criticized. To those to whom I am indebted for these services I can never be sufficiently grateful.

RAYMOND B. FOSDICK.

New York City,
December 15, 1914.

EUROPEAN POLICE SYSTEMS



EUROPEAN POLICE SYSTEMS

CHAPTER I

THE PURPOSE AND FUNCTION OF THE POLICE

Definition of police.—Common purpose of all police bodies.—Varying tasks.—Police task modified by economic conditions.—By a city's size and the character of its industries.—By relative homogeneity of population.—By national traits and characteristics.—Comparative criminality of European states.—Varying conceptions of the police.—British and Continental conceptions contrasted.—Different functions of the police.—British and Continental functions contrasted.—German police ordinances and penalties.—Unwieldiness of the German system.—The common problem of the European police.

THE English word "police" as a term to signify an organized body of constabulary is of comparatively modern origin. When Sir William Blackstone published his celebrated *Commentaries* in 1765, he gave it a much broader meaning. "The public police and economy," he said, "must be considered as the due regulation and domestic order of the kingdom, whereby the individuals of the state, like members of a well-governed family, are bound to conform to the rules of propriety, good neighborhood, and good manners"¹—a definition wide enough to include the entire domestic policy of a nation. Not until the Parliament Act of 1787, which provided

¹ *Commentaries*, Tenth edition, London, 1787, Vol. IV, p. 162.

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for a constabulary system in Ireland,¹ did the word come to be used officially in its modern and somewhat limited sense. To-day we mean by police the primary constitutional force for the protection of individuals in their legal rights, or — to use M. Louis Lépine's definition — "an organized body of officers whose primary duties are the preservation of order, the security of the person and the safety of property."² To the study of the organization and operation of such bodies in European municipalities this book is devoted.

The definition just given indicates the general purpose of all police bodies. It is at once evident, however, that in fulfilling this purpose, the task of the police can in no two communities be exactly the same. The police problem is a variable problem, not only as between different countries, but as between different cities in the same country, and even as between different periods of time in the same city. The Italian police are confronted with a situation unfamiliar to the English police; Stuttgart and Königsberg, two typical German cities, require in the way of police activity, somewhat different treatment; Vienna presents to-day a police problem quite distinct from that of twenty years ago.

So many factors are responsible for these variations that it is possible to mention only the more important. Alterations in economic conditions, for example, inevi-

¹ 27 Geo. III c. 40. This act laid the foundation for the subsequent formation, in 1836, of the Royal Irish Constabulary. See *History of the Royal Irish Constabulary*, Curtis, Dublin, 1871; and the *Report of the Committee on Inquiry*, appointed by the Chief Secretary for Ireland, Dublin, 1902.

² *La Police* (Extrait du "Répertoire du droit administratif") Paris, 1905, p. 4.

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tably produce changes in the kind of activity required of the police. Three hundred thousand paupers settled in Liverpool during the four years that followed the Irish famine of 1849, with consequences visible even to-day in the peculiarly difficult problems which face the police authorities of that city. "I have no hesitation in saying," wrote the former Head Constable in 1910, "that by far the greater part of the crime of Liverpool is due to poverty."¹ In Dresden, a German city of approximately the same size, the police problem is far less acute. For this condition a variety of causes may be assigned, but prominent among them is the absence of a pauper class. "We have no real poverty here," the police president of Dresden told the writer.

Again, the task of the police varies with the size of a city and the character of its industries. A large manufacturing center such as Birmingham or Manchester is, from a police point of view, decidedly more difficult to handle than smaller, quieter cities like Worcester and Lincoln. Not only is the total volume of crime smaller in the latter cities, but the number of crimes per thousand of population is smaller, while in point of variety the crimes themselves have a comparatively limited range. Moreover, the proportion of serious crimes, such as murder and burglary, is not so large in the smaller towns as in cities of complex industrial development.²

¹ *Report to the Watch Committee on the Police Department of Liverpool for the year 1910.*

² These conclusions are borne out in striking fashion in the following table (compiled from *Judicial Statistics of England and Wales, 1911*, published by the British Home Office), in which a comparison is made between the crimes of the thirty-three English

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The simple social and economic environment of the less important municipalities produces a comparatively simple police problem.

Similarly, the police problem varies according as the population of a city is homogeneous or heterogeneous. A population made up of different elements, each with its own traditions, habits and racial peculiarities, is not so easily directed or controlled as one having a common heritage and uniform customs. European cities show a somewhat surprising homogeneity. Of the more than seven million people living within the Metropolitan police district of London, only 211,000 were born abroad. Of this number, 45,000 are Russians, 42,000 are Germans, 27,000 are Poles, 14,000 are Italians, while the remainder consists of smaller numbers of various nationalities.¹ In other words, less than three per cent. of London's population is of alien birth. Similar condi-

boroughs which exceed 100,000 population each and the twenty-nine which fall below that figure.

	33 Boroughs over 100,000 population	29 Boroughs under 100,000 population
Average population		
Total number of crimes *	239,530	68,436
Number of crimes per 10,000 population	34.136	5.628
Varieties of crimes		
Proportion of serious crimes (crimes against the person and crimes against property with violence) to total number of crimes	43.19 25.70	28.36 15.80
* By "crimes" is meant indictable offenses known to the police.	16.8%	11.4%

¹ Census of 1911. Vol. 9. This volume does not give the figures for the Metropolitan police district as a whole. These statistics have been obtained by adding the figures given in the census for the administrative County of London to those of the other boroughs and districts that make up the Metropolitan Police District.

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tions exist in Berlin. Of a population numbering 2,071,257, German is the mother tongue of all but approximately 60,000. Only 2.9 per cent. of the population speak a foreign tongue either in addition to, or to the exclusion of, German.¹ In Paris, 170,000 out of 2,720,000 represent other nationalities than French, approximately 6 per cent., a figure somewhat higher than that of Berlin or London.² In Vienna, less than 1 per cent. of the 2,031,498 inhabitants come from beyond the bounds of the Dual Monarchy. The population of the Austrian capital is, nevertheless, heterogeneous to a degree not indicated by this figure.³ The Empire embraces a number of widely divergent and antagonistic races, and the population of Vienna is steadily recruited not only from Hungary but especially from the Czech provinces of Bohemia and Moravia. This concentration of discordant elements threatens ominously the peace of the city described by Bismarck as the German capital of a Slavic empire. With the exception, however, of Vienna and other cities of Austria, the populations of European cities are remarkably homogeneous, and the task of the

¹ *Statistisches Jahrbuch der Stadt Berlin*, 1913, pp. 40, 41. The 60,000 of whom German is not the mother tongue are made up of 31,000 Poles, 3,600 Czechs, 3,000 Hungarians, 2,400 Russians, 1,860 English, 1,557 Italians, and other nationalities in lesser numbers.

² *Annuaire statistique de la Ville de Paris*, 1912. Figures are based on the 1911 census. The 170,000 foreign population is made up of 33,000 Belgians, 26,000 Italians, 25,000 Germans, 19,000 Swiss, 18,000 Russians, 11,000 English, 8,000 Americans, 7,000 Austro-Hungarians, and other nationalities in smaller numbers.

³ Meyer's *Konversationslexikon*, Vol. 20, annual supplement 1910-11. The Vienna figures are unsatisfactory for the reason that the official returns showing the distribution as to habitual language include only the *citizens* of Austria who are living in Vienna rather than the entire population.

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police in preserving law and order is correspondingly simplified.

Again, the police problem throughout Europe varies according to national traits and traditions. Though some difference of opinion on the subject exists, there can be little doubt that temperament and historic custom play an important part in determining the task and methods of police bodies. Consider, for example, the policing of crowds. Two hundred thousand men may assemble in Hyde Park, London, to discuss labor grievances without menacing the public order. Like all British crowds they are good-natured, even lethargic. Temperament and habit unite to render such gatherings harmless. A similar assembly in any of the Latin countries or in Austria-Hungary, would need only the spark of some untoward rumor or occurrence to make it dangerous, perhaps destructive. "Our population is too excitable," the police president of Budapest said, in discussing his military plan of organization. "A civilian body or a force officered by civilians would be overwhelmed." A similar remark was made by one of the assistant secretaries of state for Hungary. "In a country where the public has learned to control itself," he said, "no great police force is needed. You Anglo-Saxons have learned the lesson of self-control; our people have not."

In some countries, whether for racial or historic reasons, or both, there is greater respect for law and the established order than in others. In this matter England and Germany are typical. Beyond question the predominant public attitude in these countries is an attitude of instinctive acquiescence to authority, and to this

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extent, at least, the task of the police in maintaining order is lightened. But even between England and Germany the differences are so striking as to call for widely divergent police methods. England is frankly individualistic in her point of view. The Englishman wants to mind his own business, to look to his own safety, to guard his own rights, to use his own judgment — in a word, to be let alone. The German point of view, on the other hand, may fairly be called paternalistic. The state must care for its own. So far from resenting it, the German seems to require constant direction; without it he gives the appearance of being unable to take care of himself. Orderliness in Germany is not born of individual self-control; it is a social habit enforced by the arm of authority. The country is placarded from end to end with "*Verboten*" signs; the things forbidden cover almost every phase of human activity. In all public conveyances and in stations, on the streets and in the parks, the citizen is informed by sign and official warning not only as to actions prohibited but as to actions mandatory. To these symbols of order the law-abiding German invariably and instinctively submits. One gets the impression that the Englishman's respect for law is more basic, more a matter of principle than that of the German. The respect of the latter runs rather to correctness in outward form, according to the prescription of public authority.

The police problem is vitally affected by this distinction. German orderliness is proverbial. The streets and parks of German cities are spotless. A hundred thousand people bring their lunches to the *Gruncwald*

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near Berlin every pleasant Sunday and leave it as clean and clear of rubbish as when they entered. Vandalism is practically unknown. Public disorder of any kind is infrequent. From his childhood the German is drilled to respect outward order and decency. On the other hand, the British individualistic spirit demands a greater freedom from restraint; it is inclined to be impatient of mere rules; it does not readily submit to regulation for the sake of the regulations. As a result the task of the English constable in maintaining order, if less varied, is frequently more difficult than that of his brother officer in Germany.

National traits and characteristics also are responsible for variations in criminality in the different countries of Europe. At least, whether for racial or economic or other reasons, certain crimes are more common in one country than in another. There are more homicides every year in southern than in northern Europe.¹ Enrico Ferri, in his work on the anthropological phases of homicide, classifies the European population under three heads, declaring that homicide is most frequent among the Latins, and least frequent among the Teutons (including the Anglo-Saxons and Scandinavians) while the Slavic population occupies, in this respect, an intermediate position.² Unfortunately there are no reliable statistics by which broad divisions of crime may safely be

¹ But the common belief that Italy leads in the proportion of homicides is not undisputed; Enrico Ferri, *L'omicidio nell'antropologia criminale*, Turin, 1895, p. 252, claims that homicide is more frequent in Spain than anywhere else in Europe.

² But Ripley, *Races of Europe*, New York, 1910, pp. 522-528, would not attribute the difference to racial causes.

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compared as between one nation and another. Perhaps Augusto Bosco has made the most successful effort in his book on the comparative criminology of European countries.¹ He rates the number of homicides for each one hundred thousand of the population as follows:

<i>Country</i>	<i>Period of time</i>	<i>Number</i>
Italy	1895-1899	12.15
France	1895-1899	3.27
Ireland	1895-1899	2.46
Scotland	1895-1899	1.08
England	1897-1899	1.34

The lack of uniform laws and the varying systems of crime classification have for the most part made extended comparisons impossible. Enough has been adduced, however, to show clearly a wide divergence in degrees of criminality between the various European countries.²

¹ *La delinquenza in vari Stati di Europa*, Bosco, Rome, 1903.

² Similar variations among different peoples and in different sections are found in the statistics of suicide. Based on the figures of von Mayr in his *Der Selbstmord* (*Allg. statist. Archiv*, 1896, p. 722), Gustav Aschaffenburg (*Crime and Its Repression*, translated by Albrecht, Boston, 1913, p. 35) shows the following comparison of suicides per 1,000,000 inhabitants:

<i>Country</i>	<i>1881-1890</i>
Monaco	301
Denmark	255
Switzerland	227
Germany	209
France	207
Austria	161
Belgium	114
Sweden	107
England and Wales.....	77
Norway	68
Scotland	55
The Netherlands	55
Italy	49
Roumania	41
Finland	39

(See next page.)

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Peculiarly interesting results are obtained by the intensive study of criminal statistics in particular countries. It appears that in nations whose modern economic development is recent or as yet incomplete the more involved forms of dishonesty increase rapidly from year to year. We therefore expect to find, and do find, that in Germany and Austria, frauds, embezzlements and forgeries are for the time being on the increase. On the other hand, a nation that is advancing very slowly in economic standing, such as Italy, or scarcely at all, such as Spain, displays no increase in these more refined offenses of modern life, while retaining a conspicuously high average in the unpremeditated and savage crimes, such as homicide, rape, assault and battery.

Occasionally, different sections of the same country show striking variations in criminality. In Belgium, the number of illegitimate births varies between 2.6 per cent. in Limburg and 14.6 per cent. in Brabant;¹ in Austria, it varies between 2.6 per cent. in Istria and 44.16 per cent. in Carinthia.² In southern Italy, homicide is five

Country	1881-1890
Servia	38
Russia	32
Luxemburg	28
Spain	24
Ireland	23
Bosnia and Herzegovina	6

¹ Bodio, "Movimento della popolazione," *Bulletin de l'institut international de statistique*, Rome, 1897, Vol. X. Quoted from Aschaffenburg, *loc. cit.*, p. 33.

² Szalardi, *Der gegenwärtige Stand des Findelwesens in Europa*, 1896. Quoted from Aschaffenburg, *loc. cit.*, p. 34. The astonishing figure for Carinthia is borne out by the consistently high average of illegitimate births throughout Austria. Aschaffenburg is the authority for the following table, based on Bodio's figures (*loc. cit.*, p. 33):

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times as frequent as in northern Italy, and assault three times as frequent, while five robberies occur for every one such crime in the north. The Sicilians show seven times the homicide, four times the brigandage, and four times the obscene crimes committed by an equal number of northern Italians.¹ Murder and manslaughter are fourteen times more frequent in Sardinia than in Lombardy.² Similar differences exist between the various States of Germany. The Bavarian Palatinate and the East Prussian Province, for example, show much higher figures for personal assaults than the average for the empire.³

Country	Year	Per cent. of illegitimate births
Austria	1894	14.73
Sweden	1894	10.62
Denmark	1894	9.50
Hungary	1894	9.35
Germany	1894	9.26
Belgium	1894	8.99
France	1894	8.94
Scotland	1894	7.29
Norway	1894	7.17
Italy	1894	6.77
Finland	1894	6.39
Roumania	1892	6.06
Switzerland	1894	4.70
England	1894	4.31
Holland	1894	3.12
Ireland	1894	2.73
Russia (excluding Poland)	1894	2.66
Servia	1894	1.07

These percentages are roughly approximate to the figures for the year 1910, as compiled in *The Statesman's Year-Book*, London, 1913, except that Sweden leads with a percentage of 14.25 to Austria's 12.24 per cent.

¹ *Italia barbara contemporanea*, Alfredo Niceforo, Milan and Palermo, 1898. Quoted in *The Old World in the New*, E. A. Ross, New York, 1914, p. 101.

² Niceforo, *La delinquenza in Sardegna*, Palermo, 1897. Quoted in Aschaffenburg, *loc. cit.*, p. 38.

³ Bosco, *loc. cit.*, p. 34.

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Whether we attribute these interesting deviations to racial characteristics,¹ to economic conditions,² or to climate,³ one thing is certain: the police dealing with a community in which homicide is of frequent occurrence will not need to employ the more subtle modes of procedure necessary in a country where homicide is rare, and fraud, embezzlement, mail-order speculation and forgery are the prevailing offenses. Police activity must be adapted to the characteristic crimes.

To summarize, we see, that in spite of the common purpose underlying all police bodies, their problems are often widely different. These differences are due to economic conditions, to the size of a city and the character of its industries, to the relative homogeneity of its population and to national traits and traditions which tend to vary both the volume and the character of crime. Sometimes there are other factors, perhaps equally important, which alter the police problem or which, in specific instances, combine with the factors already mentioned to produce special situations and corresponding tasks.

To this divergence of problem, as well as to the distinct historic evolution through which each of the European nations has come, we must look for an explanation

¹ Ripley, *loc. cit.*, pp. 522-28.

² *Criminalité et conditions économiques*, W. A. Bongers, Amsterdam, 1905. *The Relations of Economic Conditions to the Causes of Crime*, Carrol D. Wright, Philadelphia, 1900. *Crime — Its Causes and Remedies*, Cesare Lombroso. Tr. from the French and German editions by H. P. Horton, Boston, 1911, Ch. IX.

³ *Das Verbrechen in seiner Abhängigkeit von dem jährlichen Temperaturwechsel*, Enrico Ferri (*Zeitschr. f. d. ges. Strafw.* II, p. 13). Aschaffenburg, *loc. cit.*, pp. 13 ff.

Aschaffenburg, *loc. cit.*, p. 54, makes the point that religion may also account for variations in criminal inclination.

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of the differences in power and authority conferred upon the police. In no two countries is the conception of the police in its relation to the public exactly the same. In Great Britain the police are the servants of the community. Their official existence would be impossible if their acts persistently ran counter to the expressed wishes of the people. They depend for their effectiveness upon public sanction. They are civil employees, whose primary duty is the preservation of public security. In the execution of this duty they have no powers not possessed by any other citizens. A policeman has no right superior to that of a private person in making arrests or asking questions or compelling the attendance of witnesses. Further, he must suffer the consequences of any illegal action he may commit, and he cannot divest himself of responsibility by pleading the orders of his superior officer, if those orders happen to be illegal.¹ In the language of Sir James Stephen: "With a few exceptions a policeman is a person paid to perform, as a matter of duty, acts which, if he be so minded, he might have done voluntarily."²

¹ In neither a civil action nor a criminal prosecution is it any defense of itself for a constable to allege that he acted under the orders of an officer whose command he was bound, by the regulations of the force, to obey. See *Beckwith vs. Philby*, 6 B. & C., 638.

² *A History of Criminal Law*, Vol. I, Ch. XIV. There is but one practical difference between the powers of the police and the powers vested in every British citizen: A police officer may arrest without warrant if he has a reasonable suspicion that a felony has occurred; a private person cannot arrest under these circumstances unless he has certain knowledge that a felony has actually occurred.

The humble position of the English constable has come down through a long course of history and is thoroughly woven into the common law. The following quaint sentence appears in Sir Thomas Smith's *The Commonwealth of England*, edition of 1589: "So that every Englishman is a sergeant to take the thiefe, and

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In sharp contrast is the Continental theory, which, evolved from the necessities of autocratic government, makes of the police force the strong arm of the ruling classes. The Continental policeman is the servant of the Crown or the higher authorities; the people have no share in his duties, nor, indeed, any connection with them. He possesses powers greatly exceeding those of the citizen. Under ordinary circumstances he cannot be prosecuted for illegal action unless permission is obtained from the government,¹ and even then he enjoys the privilege of special laws administered by special courts regulating the relations of public officials to private citizens.² Where, in England, the constable may ask no question of those whom he arrests or is about to arrest, criminal procedure on the Continent is based on the inter-

who sheweth negligence therein do not only incur Evil opinion therefore, but hardly shall escape punishment." (Quoted from *A History of Police in England*, Capt. W. L. Melville Lee, London, 1901, p. 334.)

¹ In Germany, under the recent act of May 5, 1910, the national government has assumed the responsibility determined in paragraph 839 of the Civil Code for deliberate wrong or negligent act which any imperial officer may commit against a third person. Hamburg's law on this point is typical of the legislation in the various states. Any one who considers himself injured by a police officer may ask the department whether it will answer for the act of its officer. If this question is answered affirmatively within four weeks, action may be brought against the department. If within this time no answer is made, the question is considered as answered negatively. (*Hamburgisches Gesetz betr. das Verhältnis der Verwaltung zur Rechtspflege vom 23. 4. 1870*, par. 31.)

² Thus, in France, if any official from a cabinet minister to a policeman commits acts in excess of his legal authority, as, for example, a police officer wrongfully arresting a private citizen, the rights of the party aggrieved and the mode in which those rights are to be determined, is a question of Administrative Law (*Droit administratif*)—a distinct body of special laws administered by special courts. Dicey, in his *Introduction to the Study of the Law of the Constitution*, 3d edition, London, 1889, Ch. V, has an interesting discussion of this question from an English point of view.

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rogatory system, and the police of Germany, Austria, Italy and France are allowed to resort to what are popularly known as "third degree" methods in their endeavor to wring a confession of guilt from those whom they accuse. "I have asked dozens of educated Germans living in England," says an eminent German jurist, "as to the most characteristic difference between German and English penal procedure. Invariably the answer was: in Germany the accused must prove his innocence; in England his guilt must be proved. This is the impression one gets from our system."¹

Again, in Germany, where a distinction is made between arrest and detention (*Verhaftung* and *Festnahme*), men may be taken to police stations, questioned and even detained for twenty-four hours, although there is no charge against them and no reasonable ground for suspicion. Moreover, the right of search, restricted by stringent provisions in England and used only in exceptional circumstances under judicial direction, is, in Germany and Austria, much more freely employed, its use resting in many cases solely upon police discretion.² Similarly the police in Germany and Austria and to a

¹ Karl Weidlich: *Die Polizei als Grundlage und Organ der Strafrechtspflege in England, Schottland, und Irland*, Berlin, 1908. pp. 106-107. Quotation slightly abridged. Weidlich concludes his paragraph by saying: "Our interrogatory process is subject to great abuse. The police confront accused persons with the utmost severity; they meet real or assumed lies with brutality. Their object is the attainment of a confession. Their most innocent method is an appeal to the defendant's honor; later come threats of detention and even worse methods!" "A wretched spectacle!" he adds.

² See Austrian Code of Criminal Procedure (*Strafprozessordnung vom 23. Mai 1873*), §§ 139 ff. Also German Penal Code (*Reichsstrafgesetzbuch*), §§ 123, 124, and 342; Code of Criminal Procedure (*Strafprozessordnung*, February 1, 1877), §§ 102-110; Law of February 12, 1850, §§ 7-9, and 12.

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somewhat limited extent in France and Italy are given powers to restrict freedom of discussion and the right of public meeting to an extent unheard of in England.¹ In other words, the different ideas as to the powers of the police and their relations to the public arise from different constitutional conceptions. The great safeguards to personal liberty established in England by Magna Charta and the Bill of Rights and sustained by centuries of judicial interpretation are almost entirely lacking on the Continent. While the constitutional struggles of the last hundred years in Germany and Austria have not left police powers entirely unaltered, it is scarcely an exaggeration to say that in spirit and procedure they still represent the Continental absolutism of the 18th century.²

We perceive, therefore, a broad distinction between the English and the Continental conception of police. Fundamentally the distinction is based on different ideas as to the extent of police power which a government shall exercise. In Great Britain police organization has been built up around the conception of a constabulary as a prohibitive or repressive power. Until the middle of the nineteenth century, police legislation was looked upon as a body of law prohibiting certain actions regarded as prejudicial to the public welfare. On the Continent, however, the idea early developed that the state, in addition to its prohibitive measures, should resort as well to preventive measures. As Dr. Goodnow points out,³ the

¹ Dicey, *loc. cit.*, contains an interesting comparison of this point between England, Belgium, and France.

² Weidlich, *loc. cit.*, Ch. IV.

³ *Municipal Government*, New York, 1909, Ch. XII.

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law was conceived of as a rule of conduct which should not only prohibit actions prejudicial to public welfare, but also prescribe the performance of definite acts which in themselves would make resort to repression unnecessary. Out of this theory grew an extensive supervision of the classes considered dangerous to the community, with a resulting restraint on individual freedom of action. The Continental police were given privileges and powers of control over the population with which the English police were entirely unacquainted. While these powers have, to some extent, been curbed by the liberalism of the nineteenth century, and while, as we shall see, police activity has been greatly limited in modern times, Continental and Anglo-Saxon theories are still widely at variance.

What we have said of British police requires, however, a qualification. While the function of the English constabulary has, it is true, undergone little or no change, and still conforms to the characterization given above, the conception of police power has broadened. With the expansion of British commerce and industry resulting from the Industrial Revolution, new measures became necessary to safeguard the lives and health of the artisan population, and as a result factory legislation and public health laws were enacted. These are essentially police measures of preventive character. Later similar laws were passed on the Continent. An important distinction in the enforcement of these laws at once developed. In the Continental countries the new statutes were left largely to the regular police officials, who, as we have observed, were already engaged in handling other preventive

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measures. In Great Britain they were given to various national and municipal departments and branches, for the most part specially formed for that purpose. The contrast with the Continent in respect to the function of the regular police bodies has, therefore, been intensified rather than diminished by the progressive legislation of the nineteenth century.

So much for differences of a qualitative nature between British and Continental police — differences, that is, as to the kind of power the policeman possesses. Equally striking is the difference in respect to the scope or extent of police functions — the number of things that the police are charged to look after. Police duties in England are to-day confined roughly to three tasks: first, the maintenance of order; second, the pursuit of criminals; and third, the regulation of traffic. These duties are inter-related; together they form a unified policy whose objective point is public security, and the police are, generally speaking, concerned with nothing else.

In Germany, on the other hand, and to a large extent in Austria and France, police functions far transcend this somewhat restricted scope. In these countries there is hardly a governmental activity that is not more or less directly connected with the police; indeed, in Germany the police force cannot be said to constitute a sharply defined independent authority within the internal administration. Thus in Prussia there are Insurance Police, Mining Police, Water and Dike Police, Field and Forest Police, Cattle-Disease Police, Hunting Police, Fisheries Police, Trade Police, Fire Police, Political Police, Roads Police, Health Police, Building Police and a score of

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others.¹ To be sure many of these divisions represent state functions and are responsible to state officials.² But even the municipal police departments are hardly less complex in the variety of their duties. In all the cities of Germany and Austria, and to a large extent in the French cities, the police are engaged in many tasks which in England and Scotland are performed by various branches of the municipal government, if indeed they are performed at all. Of the twelve distinct divisions (*Abteilungen*) into which the Berlin police department is separated, only two, the uniformed force (*Schutzmannschaft*) and the detective force (*Kriminal-Abteilung*), deal with functions which are handled by the police departments of English and Scottish cities. The other divisions are engaged in work which, according to the English standard, does not properly belong to police duty. Thus in Berlin, the fire department, the health department, the prison department, the building department (including the condemnation of land for public purposes) and certain functions of the charity department are all branches of the huge police organization. The police supervise the markets and the sale of provisions; they pass on the quality of food-stuffs; they exercise an oversight of public assemblies and meetings; they abate nuisances; they inspect lodging houses, cafés and

¹ See *Handbuch der Verfassung und Verwaltung*, Hue de Grais, Berlin, 1912, 21st edition, pp. 350 ff., for an interesting discussion of the various forms of police.

² *Ibid.*, Par. 219. Some of these divisions are under the jurisdiction of the Prussian Minister of Public Works, some under the Minister of Commerce, others under the Minister of Religion and Instruction (*Kultusminister*), etc. As such their functions are, to a large extent, administrative.

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places of amusement; they supervise druggists, veterinaries and the details of various professions; they prepare construction plans for street and river-front improvement; they keep a strict watch on certain classes of banking institutions; they frame regulations for the public conduct of citizens and mete out punishment for violations. A simple list of their functions covers forty-six pages of the official police hand-book.¹ Many of the functions have no counterpart in any governmental function of Great Britain, as, for instance, the compulsory registration of all citizens and strangers (*Meldewesen*),² and the minute regulation of various kinds of private business (*Gewerbepolizei*).

These multifarious police functions are not characteristic of Berlin only. They are found in nearly every German city, especially throughout Prussia, although in many of the larger towns, distinct specialties, like the fire and building departments, have been transferred to the jurisdiction of the municipal governments.³ In Austria and in France, outside of Paris, the Prussian extreme is not followed, but even in these countries the contrast with the simplicity of English police functions is marked. In Paris, aside from the regular patrol, detective and traffic functions, the police department includes a large number of bureaus or branches, such as

¹ *Geschäfts und Reviereinteilung der Königl. Polizeiverwaltungen im Landespolizeibezirk Berlin*, Berlin, 1913.

² See Chap. IX for a discussion of the purposes of this function.

³ For example, in Dresden the so-called *Wohlfahrtspolizei*, or welfare police, whose duties relate to health, fire and building functions, etc., were handed over to the municipal government in 1853. In case of conflicting functions, the regular police force has jurisdiction.

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the Health Dispensary, the Medical Inspection of Insane People, the Inspection of Wet Nurses, the Inspection of Private Hospitals, the Tramways and Metropolitan Railway Control, the Bureau of Navigation and Ports, the Architectural Department, the Contagious Disease Department, the Bureau of Public Assistance, and the Inspection of Classified Establishments. While the functions of the police are not so varied in Vienna and Budapest, they are, nevertheless, sufficiently complex. In these cities, as in Prussia, the police assume duties and responsibilities which are alien to the police of British cities.

An insight into the history of Continental police powers, particularly in Germany, is necessary to a full understanding of their broad scope. The term "police," as it was originally employed, denoted all state functions as distinct from ecclesiastical functions. Gradually through the separation of foreign, military and financial affairs the term came to be used, in the seventeenth century, as synonymous with internal administration. It included all the activities of the state which had not been segregated into special administrative branches. The separation of judicial functions was a further and even more advanced step in limiting the powers of the police, so that by the middle of the eighteenth century the scope of police activity had been narrowed roughly to two main lines, the so-called security police (*Sicherheitspolizei*) and the welfare police (*Wohlfahrtspolizei*), the former intended to preserve the individual from dangers threatening his person and property, the latter to further the public welfare by the promotion of interests beneficial to society. Gradually, through legislation and judicial in-

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terpretation, the term "police" has been generally restricted to the former of these two functions; so that now, after a long process of delimitation, police activity has come to be one of the phases of the internal administration rather than the entire internal administration itself.¹ To this course of development must largely be attributed the broadly marked functions of the police of the Germanic countries. It is scarcely an exaggeration to say that, whereas in England the activities of the police cannot exceed the powers expressly conferred by statute, in Germany, the police have all the functions of government which have not been directly transferred to other branches of the administration.²

Of the many functions of the Continental police above enumerated, two, especially in Germany and Austria, stand out in marked contrast with English law and custom and should be particularly emphasized. In the first place, the police have the power to frame rules and ordinances (*Verordnungen* and *Verfügungen*) regulating the conduct of the citizens in respect to all the functions coming within their jurisdiction; that is, the power of supplementary legislation under the general laws of the state, which in England is vested in city or county councils, is, in Germany, given to the police. In the second place, the police have the right, which in England is pos-

¹ The Prussian General Code of 1794 defines the function of the police as the right "to institute the necessary measures to maintain public order, safety and peace, and to remove the dangers threatening the public as a whole or the individual members of it." (*Das Landrecht*, II, 17, Sec. 10.) This definition is still valid in Prussia.

² See Hue de Grais, *loc. cit.*, pp. 350 ff. Also *Principles of Prussian Administration*, Herman Gerlach James, New York, 1913, Ch. VII.

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sessed only by the police courts or other courts of inferior criminal jurisdiction, to punish, within certain limits, violations of laws and ordinances; that is, they are allowed to exercise certain judicial functions. These powers are so important and constitute so great a breach between the English and German conceptions of police that a brief discussion of their operation is necessary.

The ordinance-making power of the German police is a right delegated by national or state legislative action, either through general or special provisions. It proceeds on the theory that many laws require elaboration and executive definition by the local authorities. Thus the general sections of the Imperial Penal Code (*Reichsstrafgesetzbuch*) are elaborated by the police officials in scores of local ordinances. The same is true of laws emanating from the various legislative bodies, which in any way require expansion. On this basis each local police authority, with the occasionally required consent and approval of the town council or other communal body, has the right, within certain fixed legal limits, to promulgate and enforce its own regulations for the territory included within its jurisdiction.¹ A regulation

¹ The legal limits of the right to issue police ordinances are fixed for Prussia in the *Polizeiverwaltungsgesetz* of March 11, 1850; for Bavaria, in the Police Penal Code of December 26, 1871 (Arts. 51-57); for Saxony, in the Jurisdiction Law (*Kompetenzgesetz*) of January 28, 1835 (§ 2); for Hamburg in the Revised Law of Administrative Organization (*Gesetz über die Organisation der Verwaltung*) of November 2, 1896 (§ 9). For discussion on this subject see Hue de Grais, *loc. cit.*, pp. 358 ff.; Gustav Roscher, *Grossstadtpolizei*, Hamburg, 1912, pp. 34 ff.; O. Mayer, *Deutsches Verwaltungsrecht*, §§ 20, 22-25; Rosin, *Polizeiverfügen und Polizeiverordnungen* in Stengel's *Wörterbuch des deutschen Staats und Verwaltungsrechts*; James, *loc. cit.*, Ch. IV.

Other administrative branches than the police often have the right to frame ordinances. Thus in Prussia the various subdivi-

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thus framed cannot conflict with any provision of the original law. It can be overruled by a superior administrative authority on the basis of legality or necessity¹ or by a court on the basis of legality alone.

A knowledge of this ordinance-making right is necessary to one who would understand the vast powers of the German police in regulating the conduct of private citizens. In Prussia, for example, the wide scope of the law of March 11, 1850,² gives to local police forces the right to pass ordinances relating to the protection of persons and property, to traffic and markets, to public meetings and strangers, and to an elaborate list of similar matters. Not content with a categorical enumeration, the law concludes, "and all else which must be regulated through the police power in the interest of the communes and their members."³ In the same way, section 366, subdivision 10, of the German Penal Code⁴ reads: "Any one shall be punished by a fine up to 60 marks or imprisonment up to 14 days who transgresses the police regulations issued for the maintenance of security, convenience, cleanliness and quiet on public roads, streets, places or waterways." These sections, and others like them, have been used as the legal basis for hundreds of police ordinances touching the local administration — the ministers, the provincial presidents, the district authorities and the Circle directors — have powers along this line carefully defined by statute.

¹ Thus in Prussia local police ordinances may be overruled by the district president (*Regierungspräsident*) or even by the competent minister. (Law of March 11, 1850, *Preussische Gesetzsammlung*, 1850, § 265. See also the supplementary provisions of the law of July 30, 1883.

² See preceding note. This law regulated anew the whole subject of police ordinances.

³ *Preussische Gesetzsammlung*, 1850, § 265.

⁴ *Reichsstrafgesetzbuch*.

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ing every conceivable human activity. On every side and at every turn the German citizen is confronted by newly adopted police regulations. Thus in Berlin, the Police President has recently issued ordinances regulating the color of automobiles, the length of hatpins and the methods of purchasing fish and fowl. He has decreed that a prospective purchaser shall not touch a shad in order to determine whether there is any roe and shall not handle a fowl to verify the market woman's praise of its tenderness. Each such ordinance provides a penalty for violation. Nor is Berlin exceptional in this respect. A glance at any compilation of local police regulations will bring to light similar examples. Thus in Stuttgart, a driver may not snap his whip as he guides his horses in the street; a customer may not fall asleep in a restaurant or a weary man on a park bench; a barber may not keep his official trade card in an inconspicuous place; a cab-driver may not leave his position in front of the railway station during the hours in which the police decree he shall be on duty; a driver may not hold his reins improperly or go through the public streets without having the owner's name in a conspicuous place on his cart or carriage; a delivery boy may not coast on a hand-cart; a passenger may not alight from a train on the side away from the platform or while the train is in motion; children may not slide on a slippery side-walk; a citizen may not be impertinent to a public official on duty nor offer any affront to his dignity.¹ These regulations are not

¹ The dignity that hedges a police official has been made the subject of innumerable laws and ordinances throughout Germany. Thirteen sections of the German Criminal Code deal with the subject of "insult" (*Beleidigung*, §§ 185 ff.). Official dignity and honor

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only negative, they are often positive; not only general, but particular and directed against specific parties.¹ Thus a house owner *must* sprinkle his street in hot weather when ordered by the police or a certain striker *must* refrain from picketing when so directed or a given contractor *must* remove building encumbrances on demand.

To grant to administrative bodies like the police broad legislative powers runs counter to the conception of English government. Even the Germans with their political philosophy and their national traits favorable to a paternal regulatory system, occasionally grow restive under the yoke of police rules. The eminent Hue de Grais sees in the intricate network of ordinances an almost unintelligible tangle. "To have a clear view of these multifarious provisions has become next to impossible," he says. "Efforts have been made to get up collections of them, but without permanent success. Only a limitation and a more purposeful application of this important privilege can remedy present conditions."² Dr. Karl Weidlich of

are especially protected. Apropos of this matter, Weidlich remarks: "We permit our police to nurse their authority as a sacred thing and thus to develop into a menace, instead of a safeguard to public liberties. A great stir was made to limit the rather infrequent cases of *lèse majesté*; but no one raises a hand to apply corresponding principles to the very much more important matter of 'insults' to policemen or 'resistance to state authority.' Yet this would avoid thousands of needless punishments every year, and would save the state the unprofitable task of training internal foes!" (Weidlich, *loc. cit.*, p. 98.)

¹ A distinction is made between *Polizeiverordnungen*, or general ordinances, and *Polizeiverfügungen*, which have in view a special case or a specific person. Commands as well as prohibitions may come under the latter head and the police are vested with full compulsory and restraining powers.

² *Loc. cit.*, p. 360.

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Stuttgart, a judge of the county court (*Amtsgericht*) of Württemberg and an authoritative student of English and German police systems, goes even further. "It is not the true function of the police," he says, "to interfere in the private and business life of the citizen, thus producing annoyance and bitterness. Under our laws, especially under section 366, subdivision 10, of the Penal Code (above quoted) the police are in position to paralyze the fundamental rights of our citizens and the effectiveness of our court decisions, whenever, in their judgment, matters arise involving a danger to public security and quiet. In proof of this we need simply point to the frequency with which the higher court (*Kammergericht*) is compelled to annul police regulations for the violation of which hundreds of persons have already been punished. The excellence of the English police, on the other hand, their non-political functions (*unpolitische Arbeit*), and their respect for personal dignity are the measure of the national spirit of a free people."¹

Not only have the German police wide legislative powers, but they are also allowed to exercise certain judicial functions. Generally speaking, all misdemeanors or minor infractions (*Uebertretungen*) the penalty for which does not exceed imprisonment for fourteen days or a fine of 60 marks, are punished by the local police.²

¹ *Loc. cit.*, p. 98. The quotation is slightly abridged.

² The imposition of this maximum penalty is in some of the German states modified by state law. Thus in Prussia, the police officials of a *Bezirk*, or district, can impose a maximum punishment of only three days' imprisonment or 30 marks fine, the larger penalty of fourteen days or 60 marks being limited to superior police authorities. In Stuttgart (Württemberg), the local police can impose punishments of six days' imprisonment or 30 marks fine, or they may hand the case over to the state police authorities of the

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In other words, the functions which in England belong to the police courts and in France to a distinctly judicial branch of the civil service, are in Germany discharged by the regular local police. This power is exercised under a general provision of the German Code of Criminal Procedure¹ supplemented by various state acts.² Appeals may be taken from the decisions of the police to the *Amtsgericht*, or lower court, or to the police themselves for a review.³ An appeal acts as a stay to the execution of the penalty and must be filed within one week of the time that the decree is issued.⁴

This extraordinary power lends to the police of Germany a legal importance difficult to comprehend when looked at from the point of view of English institutions and conceptions. The contrast becomes even more marked when the method by which the police carry out this function is taken into consideration. In the majority

district in which Stuttgart is located, who can impose the fourteen days or 60 marks maximum. In Dresden (Saxony) the local police themselves impose the maximum punishments.

While the legal maximum imprisonment is fourteen days for each offense, it is possible for the police to incarcerate up to twenty-four days on the theory that the prisoner has committed more than one violation. Thus the accused may be charged with three or four different offenses, all of which may have been committed in a single act. The cumulative penalty, however, cannot exceed twenty-four days.

¹ *Strafprozessordnung*, § 453.

² In Prussia, the Law of April 23, 1883; in Saxony, the Law of March 8, 1879, and the *Verordnung* of September 15, 1879; in Württemberg, the Law of August 12, 1879, and the Ministerial Decree of September 25, 1879; in Baden, the Law of March 3, 1879, and the Decree of September 7, 1879.

³ Few appeals are taken to the police because of a general feeling that they are unfair; moreover, in the *Amtsgericht* a hearing can be secured—a thing which the police are not bound to allow, and which, as a matter of fact, they seldom do allow.

⁴ *Strafprozessordnung*, § 453.

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of cases there is not even a semblance of judicial procedure: no witnesses are called; the accused has no opportunity to explain. The policeman who observes the violation in question files a report with his superior officer; this official determines the penalty, and in due course the defendant (if such he may be called!) is notified of his impending punishment. The penalty is imposed by an official who does not see or hear the accused and who knows nothing of the case except through the unchallenged testimony of the policeman making the charge. Often a week or ten days will elapse before the accused receives notification of the penalty. Sometimes it comes as a complete surprise, punishing him for a violation which he committed unconsciously or the circumstances of which he has forgotten.¹ In Berlin, the notice of punishment is accompanied by a blank post-office order in case the penalty is a fine, so that the accused may be put to no inconvenience in coming personally to police headquarters. If after one week no attention is paid to the notice, the police make a levy on the defendant's property for value to the amount of the fine or the defendant is arrested to serve his alternative sentence.

¹ The lapse of time between the commission of the violation and the notification of punishment is often a boon to members of the criminal floating population, who, perhaps aware that their names have been taken for various misdemeanors, seize the opportunity to disappear. Largely as a result of this clumsy machinery of summary procedure—or rather, the lack of any such machinery properly so-called—every police department in Germany contains thousands of names of men wanted for punishment in connection with various kinds of trespasses and violations. Dr. Weidlich, whose experience as a judge of the *Amtsgericht* in Stuttgart has brought him into intimate touch with the situation, complains bitterly on this score. "The repeated written reports and the business of disposing of these petty things so encumber the police that no time or energy remains for larger matters," he says. (*Loc. cit.*, p. 103.)

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At any time during the week he may appeal to the *Amtsgericht*, or lower court, for a judicial determination of the question. If he wins the state pays the costs, otherwise he pays them himself. Failure to appeal is looked upon as a confirmation of the *prima facie* case established by the policeman's charge. Appeals, however, are costly and troublesome. A poor man cannot afford to run the risk, a busy man cannot take the time. Moreover, an appeal from a judgment of imprisonment, where an arrest has been made, results in the immediate incarceration of the appellant pending the decision of the court — a fact in itself discouraging to one seeking redress.¹

The system which we have just outlined is in force throughout Prussia. In southern Germany certain modifications obtain. In Württemberg, for example, the theory exists that the defendant has an opportunity to explain before the penalty is imposed. In practice, however, it is assumed that the defendant has made his explanation to the policeman who reports him. Thus, a police officer sees a driver, who, he thinks, is asleep and the driver de-

¹ *Strafprozessordnung*, §§ 112-132. Pending his hearing by the court the appellant is confined in the court prison or *Amtsgerichtgefängnis* as distinguished from the police prison, or *Polizei-arrest*, where the short-term punishments are usually served. Among the floating criminal class the custom prevails of always taking an appeal from police decrees of imprisonment on the theory (altogether too well founded, in fact!) that better treatment and better food are to be had in the court prisons than in the police prisons. In the event that the court upholds the police (and police judgments are seldom overturned), the time thus spent is part of the original sentence, and nothing is lost. The courts, however, have the right to increase the punishment if in their judgment the police penalty is too mild, and of late, particularly in Württemberg, they have been using this right to discourage appeals which they think are taken only with the idea of securing the increased comforts of the court prisons.

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nies to the policeman that he was sleeping. This is held to be an "explanation." Three or four days later the man is notified that he must pay a fine. "We always take the officer's word as truth," said the chief of the Stuttgart police in discussing the matter with the writer. This absolute reliance on the word of the policeman holds throughout Germany.

With certain modifications, the same system of police punishment which we find in Germany exists in Austria and Hungary.¹ Some of these modifications are rather important. In Austria no opportunity is given for a court review of the police decision. Appeals may be taken to the *Statthalter*, or imperial governor of the province, but they can go no higher nor is there any other method of testing the police judgment.² In this respect, therefore, the Austrian system is even less liberal than the Prussian system. On the other hand, whereas in Berlin punishment is imposed by a lieutenant of the uniformed force of the precinct who generally has come from the army and is consequently lacking in legal training or adequate knowledge of the laws of evidence, in Vienna the case is judged and the penalty imposed by a police *Kommissar*, or bureau head, who is in every instance a trained lawyer and a graduate of the university. Moreover, in Austria, before punishment is imposed, the ac-

¹ The right of the police of Austria to fine and imprison is based principally upon the *Kaiserliche Verordnung* of April 20, 1854, although there are many separate statutes that confer similar powers. The maximum punishments are fixed at fourteen days or 200 *Kronen*. Considerable discussion has taken place over the fact that this drastic power of the police is exercised under an imperial decree rather than under general parliamentary legislation.

² In Hungary appeals from the police penalty may be taken to the Minister of the Interior.

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cused is summoned to police headquarters where he is given the privilege of making a statement, or of calling witnesses in his defense. In these last two respects, therefore, the Austrian system has more of the elements of a judicial determination than the system in vogue in Germany. And yet in Vienna there is some discussion as to the advisability of introducing the Prussian peremptory or "*mandat*" system with the idea of avoiding the inconvenience of being summoned personally to police headquarters.

As may be imagined from the outline just given, the extensive judicial powers in the hands of the police are easily capable of abuse. Indeed, as Weidlich affirms, the police are in a position to nullify fundamental rights and override the decrees of the courts. That their powers are always used beneficially and liberally, as is claimed by German officials, can scarcely be admitted. For example, under the German law, a man suspected of a crime, cannot be detained for more than twenty-four hours by the police without being produced before a magistrate.¹ It is easily possible, however, for the police to imprison a suspect for any period up to fourteen days on the ground that he has violated one or more of their innumerable ordinances. "Wherever we get hold of a man whom we suspect of some crime," said one of the assistant police commissioners in Dresden in talking frankly with the writer on this matter, "we hunt around to find some ordinance which he has violated. Such a thing is not difficult to discover. Perhaps he has no employment card. Perhaps he has been impertinent to an official. What-

¹ *Strafprozessordnung*, § 115.

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ever it is, we detain him, and thus have time to work up the case." ¹ Such action undoubtedly contributes to the bitter antagonism to the police common among the lower classes of Germany and Austria. "Most men would prefer three weeks' imprisonment from a court to three days from the police," was the significant remark of the chief of the detective division of Stuttgart.

Moreover, when we consider the great number of penalties imposed by the police, it becomes increasingly probable that their judicial powers are abused. In Stuttgart, a quiet, peaceful city of 300,000 population, 40,000 police penalties are imposed each year.² At this rate, under the same system, Manchester (England) should have approximately 93,000 police court cases in a year and Liverpool 98,000. As a matter of fact, however, Manchester had in 1911 but 14,000 such cases, while Liverpool had 32,000;³ and of these cases one-third were for drunkenness, which, under ordinary circumstances, is not punishable in Germany. In other words, there are

¹ One of the commissioners or division chiefs (*Abteilungsvorsteher*) in Berlin told me that another way in which the law is evaded by the police, in case no violation of an ordinance can be urged against the prisoner, is to rush him to the court in a carriage, and have him returned immediately to the police prison upon a requisition approved by the prosecuting attorney, without actually producing him before the magistrate. "I have kept men three days in this fashion," he said, "getting my proof together and finishing my case."

² Personally communicated by officials. The fines resulting from police punishments in this city amounted in 1911 to 83,980 marks. This money is turned into the city treasury. Weidlich thinks that German cities would be very loath to lose this revenue, and that for this reason the system will be hard to break down. (*Loc cit.*, p. 103.)

³ See the annual reports of the chief constables; also *Judicial Statistics of England and Wales*, 1911, (published by the British Home Office) p. 58. Germany has no such statistics as those maintained by the Home Office.

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ten times as many punishments for misdemeanors in German cities as in English cities. This comparison is necessarily rough, but it serves to indicate the excessive use of judicial powers by the German police. "Police judgments are showering over us like hail-stones," says Weidlich, himself a loyal subject of the Empire. "A German citizen who has not had at least one such punishment must be looked for with a lantern!"¹

The combination of legislative and judicial with administrative functions produces an unwieldy and uncontrollable machine. From an English standpoint — indeed, from the standpoint of any democratic government or any liberal political creed — the practice is greatly to be deprecated. Weidlich's word, "monstrous," with which he sums up the entire system, would seem scarcely too strong.² But it is important to realize that these added legislative and judicial powers in no way affect the function of the police as an organization for the protection of public safety. Strip off these powers, which often incumber and impede the police in carrying out their simpler duties, and the same problems will be found that, in spite of modifying circumstances, confront the English and French cities alike. Although, as we have seen, many factors vary the character of the problem, the task of the Metropolitan Police Force of London is fundamentally the task of the *Schutzmannschaft* of Berlin, and it is a mistake to assume that, because an official

¹ Loc. cit., p. 102.

² Ibid. "Strafgewalt der Polizei gegenüber der Gesamtheit unter dessen Kontrolle sie arbeiten sollte, ist etwas Ungeheuerliches. Kann man sich denn keinen summarischen Prozess ohne Verweigerung der fundamentalsten Rechtsgarantien vorstellen?"

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belonging to the latter force has other unrelated functions, his ideas and experience have no applicability in London or elsewhere. The German police organization, in spite of its needless extensions, has many points worthy of careful study by the police forces of other lands.

CHAPTER II

THE PLACE OF THE POLICE DEPARTMENT IN THE STATE

European police forces usually under state control.—Municipal control for smaller forces only.—Unique situation of London police force.—London citizens voiceless in the management of their police.—Features and consequences of this control.—Police forces in provincial cities controlled by Watch Committees.—Supervision by the Home Office.—Results of Watch Committee control.—English county police.—State control in Holland and Belgium.—Lack of uniformity in control and organization in Germany.—Municipal control versus state control in Germany.—Uniformity in Austria-Hungary.—Movement toward centralization in Hungary.—Centralized supervision in France.—Lack of thoroughgoing municipal autonomy.—Peculiar situation of Paris.—The National Constabulary of Italy: the *Carabinieri* and the City Guards.—Their common functions.

IN discussing the place of the police department in the state and its relations to other organs of government, it must be borne in mind that municipally controlled police forces exist only in the smaller cities of Europe. In all the capitals and large commercial centers, the police are under the direct control of the state rather than the city. Thus, in London, Berlin, Vienna, Rome, Budapest, Madrid and Lisbon, the head commissioners are appointed by the Crown and are responsible to the Ministry of the Interior or the Home Secretary. In Paris, the head of the police is appointed by the President of the Republic; in Dresden and Munich, by the Kings of Saxony and of Bavaria respectively; in Copenhagen, Stockholm and Christiania, by the Kings of Denmark, Sweden

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and Norway, respectively. In St. Petersburg, Moscow and Odessa, the prefects of police (*Gradonachalnik*) are appointed directly by the Emperor of Russia; in Constantinople, the Sultan appoints the chief of police upon the nomination of the Minister of the Interior. In the eight largest cities of Austria, the ten largest cities of Hungary,¹ and in all the cities of the Netherlands, the heads of the police are appointed by the Crown; while in Prussia the police departments of the important cities of Frankfort-on-Main, Breslau, Kiel, Cologne, Coblenz, Königsberg and seventeen others are all under royal control. Only in the provincial cities of England and Scotland, and the smaller cities of the Continent, such as Berne, Zurich and Stuttgart, for example, do we find any degree of local self-government in the management of the police forces. Glasgow, with a population of 785,000, is the largest city in Europe with a police department under municipal control.

That the reader may be brought into intimate touch with the machinery of police administration, it is worth while discussing, somewhat in detail, the relations of the departments to the various agencies of government in each of the important countries of Europe where the conditions were studied.

GREAT BRITAIN

London.

The relation of the police force of London to other governmental agencies is unique.² In all the other cities

¹ See discussion, p. 80. The legislation effecting this is on its way to adoption.

² A careful distinction must be made between the London Metro-

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of size and importance in Great Britain, local control, through popularly elected town councils, is the characteristic feature. London alone has a royal police force whose head is appointed by the Crown, and whose policy is determined by a cabinet minister, the Secretary of State for Home Affairs.

The Metropolitan Police Force of London was established by Peel's Act of 1829. It replaced a number of small, separate, local forces of varying degrees of efficiency under whose conflicting jurisdiction the crime conditions of London had steadily grown worse, until remedial measures at last became imperative.¹ With slight

politan police and the police of the City of London. The City of London, occupying an area of one square mile, practically in the center of the Metropolitan district, and maintaining a separate corporate existence under charters and prescriptive rights which date from a very early period, has its own separate police force, regulated by an act of Parliament modeled closely on the first Metropolitan Police Act. This force is under the direct and exclusive control of the Corporation of the City of London, and has no relation with the Metropolitan force or with any other agency outside its own narrow borders. The district in which the Metropolitan police have jurisdiction covers approximately seven hundred square miles, extending over fifteen miles radius from Charing Cross, exclusive of "the City" mentioned above, and including not only the County of London, but parts of five other counties, and an increasing number of municipal boroughs. Wherever in this book the London police are mentioned, the reference is to the Metropolitan police.

¹ For a description of the extent of lawlessness in London in the early part of the nineteenth century, see W. L. Melville Lee, *loc. cit.* Ch. X.

Prior to the organization of the Metropolitan police in 1829, the local government of the populous urban towns which, in the course of centuries of continuous national life had grown up around the ancient City of London, was left in the main to county and parochial authorities invested with the powers largely conferred by the common law, although modified to some extent by various acts of Parliament. Under the strain imposed by the growth of population and modern conditions of urban life, this system broke down and the arrangements for the maintenance of public order and the administration of the criminal law became utterly inadequate.

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alterations the force is organized to-day as it was originally constituted in 1829.¹ The Commissioner is a royal official responsible only to the Home Secretary.² Neither the London County Council, nor any one of the various Metropolitan Borough Councils has anything to do with police matters. Except in so far as the Home Secretary is a member of Parliament and as such stands for an election at the hands of his own constituents, the element of direct popular control does not enter at all. Even this slight connection is weakened by the fact that the Home Secretary seldom, if ever, represents a London district, and even if he did, a national election would afford scant opportunity for the consideration of local police issues. To be sure, the Home Secretary is responsible to the Cab-

Prior to 1829, the following *separate* forces policed what is now the Metropolitan district: The City of London had a system of police and watch by night under the control of the municipal authorities. The City of Westminster had a force of eighty constables chosen from persons carrying on trade, and a smaller force of stipendiary police. The Thames Police Office had ninety men for the protection of property and maintenance of order on the River Thames. The Bow Street Office (the old "Bow Street Runners"), under the direction of the Home Secretary, had general charge of the entire Metropolitan district with the exception of the City of London. This force was divided into three classes, the Horse Patrol, the Dismounted Patrol, and the Foot Patrol, and was comprised (in 1821) of 161 men. Finally, there was the system of Nightly Watch, almost without exception a parochial establishment, and notoriously inefficient. (See *Report of the Royal Commission on the Metropolitan Force*, 1908, Vol. I, pp. 9 ff.)

¹ The most important of the special statutes by which the Metropolitan Police is governed are as follows:

Metropolitan Police Act, 1829 (10 Geo. IV c. 44).

Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47).

Metropolitan Police Act, 1856 (19 & 20 Vict. c. 2).

Metropolitan Police Act, 1857 (20 & 21 Vict. c. 64).

Metropolitan Police Receiver's Act, 1861 (24 & 25 Vict. c. 124).

Police Rate Act, 1868 (31 & 32 Vict. c. 67).

² The Commissioner is appointed under statutory provision by warrant under the sign manual of the Crown.

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inet and through the Cabinet to the country. He has, moreover, to answer in public such questions as members of Parliament may put to him relative to his management of the police. His course of action may also be influenced by newspaper criticism, to which he is constantly exposed. But direct accountability to the London public is lacking. No machinery exists by means of which the police can be popularly controlled, or the preference of the people in respect to them effectively expressed. They cannot be made a local political issue. Except through the pressure of public opinion, the citizens of London are voiceless in the management of their police.

The peculiar status of the Metropolitan Police Force is usually justified by its broad functions. It protects the person of the Sovereign, watches the government dockyards, guards the royal institutions and buildings in London and fulfils other duties of national rather than merely local importance. In answer it is pointed out by those who object to the present arrangement that the local functions of the police are of far greater importance than the national duties which have been incidentally thrust upon them. Moreover, the great bulk of the revenues of the police department is supplied, not by the imperial exchequer, but by local taxes. Why, then, it is asked, should London, alone among the great cities of England, be debarred from the management of her police?

Up to the present time, debate on this question has not attracted any large public interest. The sentiment in favor of popular control of local affairs is, nevertheless, a distinct phase of the rising tide of English democracy,

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and suggestions are constantly being made, in an inchoate and indefinite form to be sure, looking to the transfer of the Metropolitan police from the Home Secretary's office to the jurisdiction of some popularly-elected body.¹ It does not appear, however, that the movement to this end has gained force in recent years. Indeed, it is extremely doubtful whether such a change will ever be effected. London is not only the seat of government but the commercial, social and political center of a large empire. It gains a character distinct from that of any other British city by the fact that the Sovereign, the agents of the different colonies and dominions and the diplomatic representatives of foreign governments reside there. In London, too, are located not only the Houses of Parliament and the chief government offices, but the national museums and collections, and the places of entertainment to which British subjects and foreigners from all over the world resort. From the special governmental and cosmopolitan character of London arise delicate questions affecting police administration which may be regarded as beyond the competence of a merely municipal authority to decide. Surely, in view of this situation, it would be too much to expect Parliament voluntarily to surrender to a lesser body the control over the

¹ The suggestion, occasionally made in London and elsewhere, that the Metropolitan force should be placed under the control of the London County Council is obviously based on an incomplete understanding of the situation. The Metropolitan police district is more than five times the size of the County of London. There would be four other county councils and a great number of borough councils to be taken into consideration. Even if a representative agency of control were created, it would be difficult to reconcile the conflicting claims of the various county and borough authorities over whose districts the Metropolitan police have jurisdiction.

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Metropolitan police which it can now exercise through the Home Secretary.¹

To the freedom of the Metropolitan police from popular control may be ascribed many of its characteristic features. While Scotland Yard has nothing of the autocratic atmosphere which surrounds the police headquarters of Berlin and Vienna, it does possess a certain air of aloofness and independence quite foreign to the police of the English provincial cities where popular control has long been established. The public is treated courteously, but no information relative to police business is vouchsafed. The Commissioner never gives interviews to newspapers. No police official is ever quoted. Except under extraordinary circumstances, no attempt is ever made to answer a public attack or correct a misstatement in the press. When one of the borough councils within the Metropolitan district asked the Commissioner how many constables were assigned to patrol its streets, the information was curtly refused. The Commissioner assumed all responsibility for the efficient patrolling of that district and was answerable for any mistakes that might be made only to the Home Secretary. In other words, the question was one which did not concern the borough council. In the same manner all subpoenas served on the department to compel the production of papers or records are declined on the ground of privilege, a contention invariably sustained by the courts.

Moreover, the Metropolitan police department is financially

¹ "What would happen if, when suffragettes or unemployed marched on the Houses of Parliament, Parliament could only make representations to a municipal authority?" a Home Office official asked the writer.

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cially independent. Its budgetary regulations and estimates are confidential and are withheld not only from the public, but from Parliament itself, in spite of the fact that the real head of the police department, the Home Secretary, holds his position through the suffrance of Parliament. The Metropolitan force is the only police organization in Europe whose contemplated expenditures are not passed upon by some popularly-elected assembly or body. In Berlin the police budget for the ensuing year is considered by the Prussian parliament (*Preussischer Landtag*);¹ in Vienna by the Austrian parliament;² in Budapest by the Hungarian parliament; in Paris by the Chamber of Deputies and the Municipal Council.³ In these cities no money can be spent unless it has first been authorized by the legislative assembly after full opportunity has been offered for discussing the proposed expenditure. In London, on the other hand, the police budgetary estimate is a confidential matter between the department and the Home Office; the tax is collected through the Overseers of the Poor under a general act of Parliament fixing a maximum rate; and all that Parliament ever sees is a somewhat colorless statement of expenditures at the end of each fiscal year.⁴ To be sure, the presentation of

¹ For an analysis of the annual budget of the Berlin department, see Appendix III, p. 394.

² For an analysis of the annual budget of the Vienna department, see Appendix IV, p. 396.

³ For an analysis of the annual budget of the Paris department, see Appendix II, p. 393.

⁴ The Metropolitan police rate is collected through the Overseers of the Poor, as part of the poor rate. Within the London County Council area the Borough Councilors are the Overseers. In the remainder of the Metropolitan police district, Overseers are elected for each parish, or alternatively, the district council may act as Overseers upon an order of the Local Government Board.

(See next page)

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this statement in Parliament is occasionally the signal to the Opposition for severe criticism of the Home Secretary's management of the police department, but as far as the question of budget control is concerned, the money has already been spent and the Opposition is obliged to content itself with futile motions to reduce the Home Secretary's salary.¹

This arbitrary system of administration is warmly defended by the officials of the Home Office and Scotland Yard. They insist that nothing is to be gained by a parliamentary discussion of proposed expenditures. The Secretary of State for Home Affairs, the Commissioner and his subordinates are far more intimately acquainted with the needs of the police department than are the members of Parliament. Moreover, they argue that the introduction of any system of popular control in the management of police, whether it be in the shape of a Watch Committee or a County Council, would tend to politics and favoritism, which under the present arrangement are entirely eliminated. Not that they condemn the ideals of democracy, but democracy has its practical limitations, and the intricate and complex machinery of a huge gov-

The maximum rate of 11 d. in the £ fixed by act of Parliament, consists of 7 d. from the parishes and 4 d. from moneys appropriated from the exchequer. The contribution of 4 d. in the £ is exclusive of: (a) the exchequer grant in respect of imperial and national services rendered by the police (£100,000 per annum); (b) the reimbursement of the cost of police whose services are lent to government departments (approximately £270,000 per annum); and (c) the exchequer grant towards the police pension fund (£150,000 per annum).

In addition to the maximum rate above referred to, there is power to raise from the parishes an additional rate covering the deficiency of the police pension fund.

¹ For an analysis of the annual expenditures of the Metropolitan police, see Appendix I, p. 389.

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ernmental system cannot safely be entrusted to the rule of many. Particularly is this true of a police department, where continuity of policy and steadiness of aim are all-essential factors. Under popular control — so it is alleged — these factors vanish; the shifting personnel, the fickle change of opinion, the opportunity for favoritism, and, above all, the untrammelled play of politics make only for demoralization. Therefore, argues the Home Office, we require in our management of the London police a steady hand and an independent authority. You may call it arbitrary, you may call it autocratic, but it is just and efficient. Moreover, although autocratic in external aspect, it is really democratic in essence, but it is democracy with a strong man behind it. Given such a man, sure of himself and knowing his business, democracy will do well to trust him and leave Parliament and public opinion to do the rest.¹

Whatever the merit of this argument, the good results attained must be admitted. Political considerations play no part in the management of the Metropolitan police. While it is true that the people have no opportunity to express their wishes at the polls on any police question which may arise, it is also true that the policy and discipline of the police cannot be upset as an incidental consequence of the determination of political issues. The police department cannot be made the spoils of any party. Moreover, the very aloofness of the force from popular control closes the doors to petty favoritism and small

¹ See *The Metropolitan Police* (a pamphlet printed by J. P. Bland — The Times Office — 1909). The articles in the pamphlet originally appeared in the *London Times*, running from December 24, 1908, to January 15, 1909.

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politics. Political campaigns come and go; newspaper crusades against the police rise and fall; the personnel of municipal councils shifts a dozen times on ever changing issues; but Scotland Yard remains undisturbed. Even the occasional upheaval of a government and the consequent shift in the Secretaryship of the Home Office does not upset the management of the police. No secretary would ever interfere with the effective operation of the department.

Provincial cities of England and Scotland.

Arrangements in the provincial cities of England and Scotland in respect to police control contrast strikingly with the system which we have just considered. The conditions of crime in the English cities at the beginning of the nineteenth century were similar to those obtaining in London. Such police forces as existed were unorganized and untrained. The Dogberry and Verges type of town watch was all that stood between order and disorder in many an English community. In Portsmouth, twenty-two peace officers pretended to protect a population of 50,000 people, and in Liverpool, where crime was so prevalent that the town was often spoken of as "the black spot on the Mersey," the only police force existing in 1834 was a body of fifty watchmen to keep order among 240,000 inhabitants.¹

Driven by urgent necessity, Parliament passed the Municipal Corporations Act of 1835,² which, with its subsequent amendments, has standardized the system of

¹ W. L. Melville Lee, *loc. cit.*, Ch. XIV.

² 5 and 6 William IV c. 76.

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urban police administration in England and Wales. As the law now stands,¹ the council of each town maintaining a separate police force is required to appoint from time to time "a sufficient number, not exceeding one-third, of its own body," to serve as a *Watch Committee*. With this committee rests the entire control of the police,² subject only to the vote of the council in matters involving expenditures. This comprehensive plan was supplemented by Parliament in 1856 by the passage of the Rural Police Act,³ which provided for the appointment of Inspectors of Constabulary under the Home Office with authority to visit and inquire into the state and general efficiency of the police in the various towns and counties of England and Wales.⁴ It further provided that on certificates from the Home Secretary to the effect that the police force of a locality is efficient in point of numbers and discipline,⁵ a sum not exceeding one half part⁶ of the total cost of the pay and clothing of the force was to be contributed from the national treasury. Through the operation of this act there was established a complete system of national supervision over

¹ *Municipal Corporations Act of 1882*, 45 and 46 Vict. c. 50, §§ 190-200.

² One hundred and twenty-eight cities and boroughs in England and Wales maintain in this manner separate police forces under the control of Watch Committees.

³ 19 and 20 Vict. c. 69.

⁴ Scottish towns and counties were made the subject of practically similar provisions by an act passed in 1857 (20 and 21 Vict. c. 72). In 1885 the inspection was transferred from the Home Office to the Scottish Office, and the certificates of efficiency are now issued by the Secretary for Scotland.

⁵ On a third certificate, based on the proper management of a force, a contribution is made by the exchequer to the local police pension fund.

⁶ As amended in 1874. The original Act provided for one-fourth.

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all the police forces of England and Wales, which, while it in no way robs the cities and counties of the right of local control, stimulates their efforts to maintain an efficient standard and introduces uniformity into their organization and management. To be sure, the Home Office, particularly as far as the towns and cities are concerned, has no positive authority over the police force. It cannot remove an official or compel the adoption of any improvements.¹ It acts only in the capacity of a friendly guide. Its sole lever is the national subvention or grant in aid, which may be withheld if the report of the supervising inspector indicates unsatisfactory conditions. A Watch Committee, however, which, through slovenly methods or loose standards, jeopardized the grant of a sum approximately equal to 50 per cent. of its annual police budget, would bring down upon itself the wrath of angry tax-payers. Through the application of this moral force, there are few improvements within reason which the Home Office cannot compel.

In practice, however, the control of the Home Office over the provincial cities has been lightly exercised. The examinations of the inspectors have been exceedingly perfunctory, and while warnings have occasionally been given in cases of marked deficiency, no borough has lost its annual grant within recent years.² Indeed, the an-

¹ Note, however, that the by-laws of counties and boroughs touching police regulation, or matters of general good order, not of a sanitary nature, must be submitted to the Home Secretary and may be disallowed by Order in Council within forty days. (*Municipal Corporations Act, 1882*, 45 and 46 Vict. c. 50, par. 23; *Local Government Act, 1888*, par. 16.)

² There are two inspectors for England and Wales, one for the so-called "Northern District" and one for the "Southern District." Their reports for the year ending September 29th are annually laid

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annual inspection is scarcely regarded as a serious matter by local officials; little or no effort has been made to unify the methods of work, or to introduce a coördinating system in the matter of detecting crime. This timid use of its powers by the Home Office is undoubtedly due in part to its appreciation of the Englishman's passion for local self-government and his distrust of any suggestion of over-centralized control. To an even greater extent it is due to the fact that the only course open to the Home Office in dealing with a refractory police organization is the suspension or withdrawal of the *whole* grant in aid, for which only the absolute inefficiency of a force would be justification. Hitherto the Home Office has had no power to deal with the subvention *in part*, and has thus been unable to adapt the amount to individual cases, or to measure punishments to fit particular deficiencies. The new finance bill, now before Parliament for consideration, incorporates this long-needed reform.¹ With this amendment adopted, England will have a most effective piece of machinery, which, through the combination of local autonomy with a strongly centralized supervision, will prevent the provincial cities from falling much below reasonable standards.

The Watch Committee is the basis of police control in the provincial cities of England and Wales. Elected

before Parliament, and published as a Parliamentary document. There is one inspector for Scotland under the control of the Scottish Office. His reports are also published.

¹ This bill further provides for an increase in the annual subvention or grant-in-aid from the present sum of half the cost of the pay and clothing, and a contribution to the pension fund, to a sum equal to one half the total net cost of the entire police force.

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from among the members of the town council as a sub-committee,¹ it has full control of appointments, dismissals, discipline and policy; it makes regulations for the conduct of the members of the force; and has absolute authority in relation to the question of their duties. Only in matters involving expenditure must its decisions be ratified by a vote of the town council.² Complete statutory powers being thus vested in the Watch Committee, it follows that the chief constable whom it appoints has only such rights and duties as the Committee may confer upon him. As a result, the functions of the chief constable vary widely in different cities, the office being of greater or less dignity according to the degree of supervision exercised by the Committee. In some towns, punishments for offenses against discipline coming before the Watch Committee in the shape of recommendations of the chief officer are approved as a matter of course, unless the individual appeals. In many others the Watch Committee hears the complaint, decides upon guilt or innocence, and measures the punishment with little or no

¹ Liverpool has a Watch Committee of 16 members; Manchester, 22; the average size of the committee is 11 or 12. The members serve for one year. The committee cannot exceed one-third the number of the Town Council (*Municipal Corp. Act*, 1882, § 190). On the other hand, it is not required to and seldom does maintain the full quota of one-third, as a large committee would be unwieldy. The membership of the Watch Committee is fairly constant, although a change in the political complexion of the council generally involves a change in the chairmanship of the committee, sometimes, indeed, in its policies.

² Occasionally the Town Council, although without legal basis, assumes for itself some of the functions of its Watch Committee. In Manchester, for example, and in numerous smaller places, matters relating to discipline, promotion, and even prosecutions, are often discussed in the council meeting. Recently in Cardiff and Swansea, the Town Councils assumed to make appointments in spite of the protests of the Watch Committees and of the Home Office.

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reference to the chief officer. In some towns, indeed, the chief constable is little more than a messenger for the Chairman of the Watch Committee, with no room for the play of his own initiative; in others, and perhaps in the majority of towns, he possesses a very real authority, free from direction and interference, even punishing members of the force who carry their grievances to the Watch Committee. The matter is largely one of personality. A chief constable of strong character and independent ideas usually succeeds in dominating his committee; a weaker man under the same circumstances becomes merely a figure-head.

But the life of a chief constable in his relations with a Watch Committee is not always a happy one. Apart from questions of personality, there are often influences to combat, which arise naturally from the popular method by which the committee is brought into being. The personnel of the committee does not always represent the wisest choice. Too often untrained laymen are selected, engaged in the pursuit of various commercial trades, lacking the experience and technical ability to be found in the Standing Joint Committees of the county constabulary, where, as we shall see, half the membership is chosen from justices selected by Quarter Sessions.¹ In too many cases the chief constable is obliged to undergo the humiliation of being overruled in his disciplinary measures through the activity of the culprits or their friends who successfully canvass the Watch Committee.² Sometimes members of the committee attempt to keep

¹ Page 62, under "English County Police."

² Confidentially communicated by police officials.

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privately in touch with the police situation through members of the force in the inferior ranks, a circumstance prejudicial to discipline and effectiveness. Moreover, the burden which the English law throws upon the police department in the matter of prosecutions, making the chief constable practically responsible in determining the parties against whom prosecutions shall be brought, furnishes an obvious opportunity for manipulation by individual members of the Watch Committee.¹ There is scarcely a chief constable in any of the larger cities who will not confess in confidential moments to continued solicitations by representatives of the Committee and Council in favor of saloons and various other interests against which it is the intention of the department to proceed.

¹ A local prosecuting attorney in the American and Continental sense of the term is unknown in England and Wales. Except in cases of the utmost importance, the police themselves prosecute through their own solicitor, retained for that purpose by the chief constable. In offenses punishable with death, and certain other cases of importance, the prosecution is conducted by the Director of Public Prosecutions, a national officer appointed by the Home Secretary. Any private person, under the English law, may institute and carry on criminal proceedings.

In Scotland, on the other hand, as in America and on the Continent, private prosecutions are practically unknown. A crime is regarded as an offense committed against society which society must prosecute through public officials. Thus there is in Scotland a Procurator Fiscal for each county, entirely independent of the police or the municipal government. For serious cases there are four Advocates-Depute, each with jurisdiction in his own circuit under the control of the Lord Advocate. In Germany the public prosecutor (*Staatsanwalt*) is a state official appointed by the Minister of Justice or the Minister of the Interior, and attached to the particular court in which he is to officiate. For literature dealing with this subject, see *The Administration of Justice in Criminal Matters in England and Wales*, G. Glover Alexander, Cambridge, Eng., 1911; *Justice and Police*, Frederic W. Maitland, London, 1885; *Stone's Justices' Manual*; *Outlines of Criminal Law*, C. S. Kenny, Cambridge, Eng., 1902; *Kriminalpolizei und Staatsanwalt*, Dr. Erich Wulffen.

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Furthermore, the Committee has it in its power to hamper the chief constable by refusing him the necessary funds to take up prosecutions which injured parties, through want of means or for other reasons, do not institute.¹ As one of the chief constables who had been retired expressed it to the writer: "It takes a strong man to stand up against the Committee and the Council. My life would have been much happier if I had yielded."

The difficulty of the situation lies in the fact that the power to remove the chief constable rests with the Watch Committee without the necessity of approval by a higher authority. In this respect the Scottish system is preferable. In Glasgow, for example, the chief constable is appointed by the joint action of the Magistrates Committee of the Town Council and the sheriff of the County. He has charge of all matters of discipline relative to members of the force below the rank of inspector,² and from his decisions there is no appeal. He is, of course, open to suggestion from the Magistrates Committee, or the Watching and Lighting Committee, which handles the financial measures of his department, or from the Town Council as a whole, but he is not obliged to obey. He can be removed from office only by the joint action of the sheriff and the Magistrates Committee; in case of a disagreement the matter is referred for decision to the Lord Advocate for Scotland.³ The chief constable thus procures a degree of independence in his work that is lacking in the case of his brother offi-

¹ Many prosecutions which might be brought are left untouched, because the local police authority objects on the ground of expense.

² Corresponding to lieutenant in America.

³ *Glasgow Police Act of 1866*, Sec. 71.

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cial in England. The present chief constable in Glasgow stood firm against a resolution passed by the town council demanding the removal of a policeman for an alleged assault upon a citizen. Even in the face of public clamor and an award of damages by a jury to the alleged victim against the policeman, the chief constable refused to comply, as he knew the accusation to be without justice. Such an incident would hardly be possible in an English city.

Susceptible to abuses as it undoubtedly is, from the very nature of its formation, the general character of the Watch Committee has undoubtedly improved during the last quarter century. Twenty-five years ago, the chairman of the Watch Committee in Liverpool was the attorney for large liquor interests of the town, while another prominent member was the physician for most of the prostitutes. Needless to say, the activities of the police in respect to liquor and prostitution were negligible. Ten years later conditions in Manchester were shown to be even worse.¹ In 1899 the investigation of the Royal Excise Commission brought to light the fact that in Wigan the chairman of the Watch Committee was the head of a brewery company, and so powerful were the brewing interests that the chief constable did not dare to apply for a warrant to raid objectionable saloons. In Derby, of the eleven members of the Watch Committee, four were interested in saloons, the chairman of the committee himself holding four licenses. Similar conditions

¹ Report of J. S. Dugdale, Q.C., a Commissioner appointed by the Home Office to investigate complaints as to the relation of the Watch Committee to certain beer houses and brothels. The report is on file in the Home Office.

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were discovered in Nottingham, Portsmouth, Hull, Reading, Lincoln, Leeds, Devonport, and other towns and cities.¹ The finding of the Investigating Commission in this matter is significant: "We think that the Chief Constable should hold a more independent position — as in Scotland — and . . . should not be removable without the sanction of the Secretary of State (for Home Affairs)." ²

This recommendation has never been adopted, but in some towns, at least, the representatives of brewing interests no longer sit upon the Watch Committees. In this respect, therefore, the Watch Committee has improved. Could the position of chief constable be more adequately protected, so that removal would require the sanction of some higher body or official, the Watch Committee form of supervision would represent an efficient piece of machinery for the democratic control of a police force in a city of moderate size. Under its régime, the political use of patronage in the recruiting of the force, particularly in the larger towns, has been successfully curtailed, and this in spite of the fact, discussed in a later chapter, that there are no civil service regulations pertaining to the police in English cities.³ So, too, in

¹ *Final Report of Her Majesty's Commissioners on the Operation and Administration of the Laws Relating to the Sale of Intoxicating Liquors*, 1899, pp. 158-163.

² *Ibid.*, p. 162. This recommendation is contained in the minority report of the commission which was signed by the Archbishop of Canterbury as chairman, and seven members. The majority report made no detailed recommendations in the matter of police organization.

³ It cannot be denied that in some of the smaller towns personal, political and sectarian prejudices play no little part not only in the recruiting of the force, but in matters relating to discipline and promotion.

